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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James Jolly Clark

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35690

7590

08/11/2008

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.

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EXAMINER

JARRETT, RYAN A

ART UNIT

PAPER NUMBER

2121

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/811,017	Applicant(s) CLARK ET AL.	
	Examiner Ryan A. Jarrett	Art Unit 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-61 is/are pending in the application.
- 4a) Of the above claim(s) 35-38, 40-47, 49-52 and 54-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34, 39, 48 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/27/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 34, 39, 48, and 53 in the reply filed on 01/07/08 is acknowledged.

Claims 35-38, 40-47, 49-52, and 54-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 01/07/08.

It is noted that claims 1-33 were cancelled by Applicant in the reply filed 01/07/08.

Response to Arguments

Applicant's arguments, see pages 10-13, filed 06/27/08, with respect to claims 34, 39, 48, and 53 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., instant specification, pg. 9 line 28 – pg. 10 line 4) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments, see pages 13-15, filed 06/27/08, with respect to claims 34, 39, 48, and 53 have been fully considered and are persuasive. The rejection of claims 34, 39, 48, and 53 under 35 U.S.C. 102(b) as being anticipated by Vaello US 5,465,904 has been withdrawn, since Vaello does not teach or suggest a fire hazard condition, such as a dry period.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 34, 39, 48, and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the instant specification provides support for “wildfire hazard conditions”, it does not provide support for the broader “fire hazard conditions”, which could encompass other types of fires besides wildfires.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34, 39, 48, and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Moore et al. US 2004/0039489 (“Moore”). Moore discloses:

34. A water irrigation system, comprising:

irrigation equipment (e.g., Fig. 1 #122,124);

a computer system (e.g., Figs. 1-2 #120); wherein the computer system is configured to control the irrigation equipment to irrigate an irrigation zone based on a programmed irrigation schedule (e.g., [0043]: “the watering schedule”), wherein the programmed irrigation schedule is at least partially based on the region where the irrigation zone is located (e.g., [0097]-[0098]);

at least one sensing unit configured to assess an amount of moisture in an irrigation zone (e.g., Fig. 2 #117, Figs. 5L-5K #174, [0097]: “local rain”, [0118]-[0119]: “onsite tipping bucket rain gauge 174”);

wherein the computer system is configured to inhibit irrigation of the irrigation one when an assessed amount of moisture exceeds a predetermined amount (e.g., [0053], [0097], [0118]-[0119]: “rainfall can also be programmed to interrupt a watering cycle”); and

at least one receiver coupled to the computer system (e.g., Figs. 1-2 #116), wherein the receiver is configured to receive community irrigation instructions generated for the region and send the community irrigation instructions to the computer system (e.g., [0052]-[0062]), wherein the community irrigation instructions override the programmed irrigation schedule (e.g., [0043]: “improve the watering schedule”, [0132]), and wherein the computer system is configured to initiate operation of the irrigation system in response to community instructions indicating a fire hazard condition (e.g., [0043]: “during a dry period, the watering schedule is improved by irrigating more”, *A dry period is a wildfire hazard condition, since wildfires start during dry periods.*).

39. The system of claim 34, wherein the community irrigation instructions result in one or more of the following actions: termination of an irrigation cycle, reduction in duration of an irrigation cycle, reduction in frequency of an irrigation cycle, rescheduling of an irrigation cycle, and initiation of an irrigation cycle (e.g., [0043], [0132]).

48. A method of controlling irrigation of an irrigation zone, comprising:

providing a programmed irrigation schedule to a water irrigation system (e.g., [0043]: “the watering schedule”), wherein the programmed irrigation schedule is at least partially based on the region where the irrigation zone is located (e.g., [0097]-[0098]), the water irrigation system comprising:

irrigation equipment (e.g., Fig. 1 #122,124);

a computer system (e.g., Figs. 1-2 #120); **wherein the computer system is configured to control irrigation equipment to irrigate an irrigation zone based on the programmed irrigation schedule** (e.g., [0043]: “the watering schedule”);

at least one sensing unit configured to assess an amount of moisture in an irrigation zone (e.g., Fig. 2 #117, Figs. 5L-5K #174, [0097]: “local rain”, [0018]-[0019]: “onsite tipping bucket rain gauge 174”); **and**

at least one receiver coupled to the computer system (e.g., Figs. 1-2 #116), **wherein the receiver is configured to receive remote irrigation instructions and send the remote irrigation instructions to the computer system** (e.g., Figs. 1-2);

assessing an amount of moisture in an irrigation zone (e.g., [0053], [0097], [0118], [0119]);

inhibiting irrigation of the irrigation zone when an assessed amount of moisture exceeds a predetermined amount (e.g., [0053], [0097], [0118]-[0119]: “rainfall can also be programmed to interrupt a watering cycle”);

receiving community irrigation instructions generated for the region (e.g., [0052]-[0062]);

overriding the programmed irrigation schedule based on the community irrigation instructions (e.g., [0043]: “improve the watering schedule”, [0132]);

receiving community instructions indicating a fire hazard conditions (e.g., [0043]: “dry period”, *A dry period is a wildfire hazard condition, since wildfires start during dry periods.*), **and**

initiating operation of the irrigation system in response to the community instructions indicating a fire hazard condition (e.g., [0043]: “during a dry period, the watering schedule is improved by irrigating more”, *A dry period is a wildfire hazard condition, since wildfires start during dry periods.*).

53. The method of claim 48, wherein the community irrigation instructions result in one or more of the following actions: termination of an irrigation cycle, reduction in duration of an irrigation cycle, reduction in frequency of an irrigation cycle, rescheduling of an irrigation cycle, and initiation of an irrigation cycle (e.g., [0043], [0132]).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2121

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan A. Jarrett/
Primary Examiner, Art Unit 2121

08/06/08